



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

NO. 78-6621

GILBERT FRANKLIN BECK, Petitioner,

v.

STATE OF ALABAMA, Respondent.

BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI

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Comes now the State of Alabama by and through the Attorney General of Alabama and respectfully asserts that the Petition for Writ of Certiorari is due to be dismissed and that this matter should not be reviewed by this Honorable Court.

STATEMENT OF THE CASE

This case arose from the Circuit Court of Etowah County, Alabama after the Petitioner was convicted therein for the offense of "robbery or attempts thereof, when the victim is intentionally killed by the Defendant" (Code of Alabama, 1975, §13-11-2(a)(2)). The punishment was set at death.

The appeal of the conviction resulted in affirmance by the Court of Criminal Appeals of Alabama. Application for rehearing was denied on May 2, 1978. Petition for certiorari was filed by the Petitioner and granted. After oral argument the Alabama Supreme Court issued an opinion affirming the decision of the Court below. Execution was set to take place on March 30, 1979.

Application was made to the Alabama Supreme Court to stay the execution. The stay was granted on March 21, 1979, in order to give the Petitioner the opportunity to have this Honorable Court review Petitioner's conviction.

Thereafter, the Petitioner filed this petition to which this brief is in opposition.

REASONS FOR DENYING THE WRIT

The Petitioner has raised numerous issues in his petition which deal with the constitutionality of Alabama's capital punishment statute under which he was convicted.

Without a detailed discussion of those issues dealing with the merits of this case the Respondent offers the following argument as to why this cause should not be reviewed by this Honorable Court.

Initially, the Respondent would point out that the Alabama Appellate Courts have reviewed these matters raised in the petition, fully considered them and correctly decided the issues. In the present case before this Honorable Court, similar issues as are raised now were raised before the Alabama Court of Criminal Appeals. See Beck v. State, 365 So. 2d 985 (Cr. App. 1978). It is evident that the Alabama Courts below have fully considered and correctly decided these issues. In relation thereto, the Alabama Courts have addressed numerous appeals under Alabama's capital punishment statutes and have faced these issues on most of those cases. As examples of decisions by Alabama Courts which have previously discussed these issues raised by the Petitioner see in addition to Beck, supra, Jacobs v. State, 361 So. 2d 640 (1978); Evans and Ritter v. State, 361 So. 2d 654 (Ala. Cr. App. 1977), affirmed in part, reversed and remanded in part, 361 So. 2d 666 (Ala. 1978), aff. after remand; Evans v. State, 361 So. 2d 672.

Further, it should be pointed out that the decisions of the Alabama Courts mentioned above which construe Alabama's capital punishment statute are consistent with and are not in conflict with the relevant decisions of this Honorable Court.

By way of demonstration, it should be noted that Alabama's capital punishment statute which precludes any lesser included offense is not violative of the Petitioner's right to due process and equal protection. Further, this type statute helps to avoid that aspect of discrimination in death cases as is discussed in Furman v. Georgia, 408 U. S. 238. This is especially true when it is considered that Alabama's statute provides for judicial sentencing in capital cases. Thus providing for greater consistency and fairness in sentencing.

This leads to the second issue raised by the Petitioner which asserts that the jury should consider mitigating circumstances. Alabama's procedure which makes the trial judge the sentencing authority is in full compliance with Furman, supra. Further, an almost identical procedure of sentencing has been upheld by this Honorable Court in Proffitt v. Florida, 428 U. S. 242, 49 L. Ed 2d 913, 96 S. Ct. 2960 (1976).

Petitioner's issue three complains of the sentencing procedure under Alabama's statute. Again we would note that the sentencing procedure here avoids the precise concerns of lack of adequate safeguards on imposition of the death penalty as expressed in Woodson v. North Carolina, 428 U. S. 280, 49 L. Ed 2d 944, 96 S. Ct. 2978 (1976) and Roberts v. Louisiana, 428 U. S. 325, 49 L. Ed. 2d 974, 96 S. Ct. 3001 (1976). The procedure expresses a plan whereby a maximum amount of protection is afforded to a defendant. Also, this type sentencing procedure has in substance been upheld as constitutional in Proffitt, supra.

On the whole, it can be seen that the application of the case law to the case at bar and Alabama's capital punishment statute reveals that the Alabama Courts below have correctly and fully decided the issues raised by the Petitioner. These attacks on Alabama's statutes only reveal that the interpretation below did not deprive the Petitioner of his constitutional rights.

As pointed out above, the Respondent argues that the Alabama Courts have fully decided and correctly determined these matters now raised. The Respondent submits that the Petitioner's argument is without merit in that the prior decisions of this Honorable Court are controlling on these issues and these issues therefore must be resolved in the Respondent's favor.

Further, it is noted that many of the cases relied on by the Petitioner are distinguishable on the statutes which they construe. These cases do not fully support the issues raised and allegations made by the Petitioner.

For these reasons the Respondent submits that the Petition for Writ of Certiorari is due to be denied. There has been no showing by the Petitioner of any conflicts of decisions below. Further, there has been no showing in the brief of the extreme importance of this petition sufficient for this Court to review. No showing is made of a complete departure by the Court below from the accepted and usual course of judicial proceedings.

Absolutely no showing is made that the case is one which should be reviewed by this Honorable Court under Rule 19 of the Rules of the Supreme Court of the United States, adopted June 15, 1970, revised May 1, 1978. This being true, the Respondent submits that this matter should not be reviewed. Therefore, the Petition for Writ of Certiorari is due to be denied.

CONCLUSION

Based on the above showing that the holding by the Alabama Courts in this cause is not in conflict with the decisions of this Honorable Court it is respectfully urged that the Petition for Writ of Certiorari is due to be denied.

Respectfully submitted,

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Brief

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BRIEF IN OPPOSITION TO PETITION
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AFFIDAVIT OF PROOF OF SERVICE

State of Alabama

Montgomery County

I, the undersigned, Assistant Attorney General of Alabama, 64 North Union, Montgomery, Alabama 36130, hereby certify that I have deposited for service three (3) copies of a brief in opposition to the Writ of Certiorari to the Honorable David Klingsberg, 425 Park Avenue, New York, New York 10022, and ten copies to the Clerk of the Supreme Court of the United States.

This the 29th day of May, 1979.

Walter S. Turner
WALTER S. TURNER
Chief Assistant Attorney General
64 North Union
Montgomery, Alabama 36130

Sworn to and subscribed before me the undersigned, this the 29th day of May, 1979.

Cynthia F. Sherman
CYNTHIA F. SHERMAN
Notary Public